

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

03/23/22

09:38 AM

A1404017

Application of the County of Kern
to construct a grade separation of a
public road under the tracks of the
San Joaquin Valley Railroad
in an unincorporated area of the
County of Kern, California.

Application No. 14-04-017

**COUNTY OF KERN'S
PETITION FOR MODIFICATION OF DECISION 14-11-031**

Communications regarding this application should be addressed to the following:

Mr. Craig M. Pope, PE
Director, Kern County Public Works Department
2700 M Street, Suite 400
Bakersfield, California 93301-2370
Phone: 661-862-8850
Fax: 661-862-8851

BACKGROUND

The County of Kern (Applicant) proposes to construct a grade separation of Atlas Street, a new public road extension from Atlas Court, under San Joaquin Valley Railroad (SJVR) with designation as CPUC Crossing No. 103Q-111.61-B and DOT Crossing No. 936384Y. The railroad right of way is owned and operated by SJVR, a subsidiary of Genesee & Wyoming, Inc. BNSF Railway Company (BNSF) previously owned the rail right of way and retained easement rights for pipelines, conduits, communication lines and related facilities. The rail milepost for the proposed crossing is 111.61. The city limit of the City of Bakersfield is located at the westerly right of way line of the railroad with the city area located westerly thereof. A vicinity map is attached hereto as Exhibit 2.

The proposed Atlas Street crossing is a new roadway extension from Atlas Court across the railroad. Atlas Street is to be extended from a new intersection with Landco Drive south of Hageman Road, easterly across the railroad to the westerly end of Atlas Court west of Standard Street. There is not a current public or private road crossing of the railroad at this location or in the immediate vicinity.

The Project will provide alternate traffic circulation and emergency access to a large commercial / industrial area which includes petroleum refining and shipping activities. Nearly 200 acres of this area is served by a single access road, Standard Street, which has a rail spur crossing and is inaccessible when the spur crossing is blocked by rail traffic. On a number of occasions in recent years, rail switching or other rail car incidents have blocked the spur crossing for several hours. Recent activities and safety concerns have greatly heightened and identified the extreme need for alternate emergency access. The lack of alternate access to allow control of a relatively minor incident has a high potential for catastrophic results due to the lack of timely access.

The nearest public crossing of the railroad northerly of the proposed crossing is the Minkler (SR 99) Underpass at State Route 99 (CPUC Crossing No. 103Q-111.50, DOT Crossing No. 029465W). This public crossing is located approximately 0.2 miles northerly of the proposed Atlas Street crossing.

The nearest public crossing of the railroad southerly of the proposed crossing is at Rosedale Highway (SR 58) (CPUC Crossing No. 103Q-113.20, DOT Crossing No. 029473N). This public crossing is located approximately 1.7 miles southerly of the proposed Atlas Street crossing.

The railroad and rail operators affected by the proposed crossing are in complete and full agreement with the scope and layout of the grade separation. A letter of project concurrence from San Joaquin Valley Railroad/Genesee & Wyoming, Inc. is attached hereto as Exhibit 3. Letters of concurrence from the City of Bakersfield, the Kern Council of Governments

and local industrial park businesses are also attached hereto as Exhibits 4, 5 and 6 respectively.

Applicant filed its application for authority to construct the underpass on April 14, 2014, and the Commission issued Decision 14-11-034 approving the request.

SUMMARY OF REQUESTED MODIFICATION AND JUSTIFICATION

After obtaining authority to construct the underpass from the Commission, due to issues with the right of way and transportation funding, on September 15, 2017 Applicant requested a 3-year extension of time to complete the work, which was scheduled to expire on November 20, 2017. A copy of the request letter is attached as Exhibit 1. The Commission's Rail Crossings Engineering Branch (RCEB) requested a letter of support from the railroad that owned the rail corridor in question, and on September 27, 2017 the SJVR provided a letter of concurrence supporting the project and the requested time extension. A copy of the concurrence letter is included as Exhibit 3. The County provided the SJVR's concurrence letter to the CPUC, the project went on hold due to funding issues. In early December 2020, the funding for construction became available, and Applicant requested an additional 3-year extension to construct.

Unknown to the Applicant, the time extension request submitted in November 2017 was never processed, and the extension was never officially put in place¹. This was not known to the Applicant until a second extension request was submitted in December 2020. To determine the appropriate process to move the project forward, RCEB facilitated a request to the Administrative Law Judge (ALJ) Division seeking an opinion as to if the Applicant could submit a Petition for Modification request or would be required to submit a new application. ALJ Sophia J. Park stated that the Applicant may submit the petition for Modification, with the caveat that the request must contain a compelling reason as to why the second time extension

¹ E-mail from Mathew Bond CPUC Rail Crossings Engineering Branch to Martin Nakahara CPUC Docket office

was submitted in December 2020, since the initial time extension would have expired on November 20, 2020, prior to the Applicant's request².

Applicant requests that the Commission provide an extension of time through this Petition for Modification rather than submitting a new application in an effort to obtain CPUC prior to upcoming funding deadlines.

A review of the 10 previous Rail Commission Decisions show an average of 11 months to process an application from submittal to decision (See Exhibit 7). If CPUC approval is not obtained by August 2020, Applicant will be unable to advertise and construct the work prior to the expiration of the various funding sources. Due to the difficulty in finding and obtaining the grant funding if the deadline is not met is unlikely that this project will ever move forward.

Applicant regrets not submitting its second extension request in a timely manner, this was due to a change in project management for the County, and to the disruption to County services caused by the COVID 19 pandemic.

Grade separated crossings offer the greatest level of safety by separating rail from vehicular traffic at different grades. The construction of grade separated structures has been a high priority for CPUC and its rail safety staff, which includes the Section 190 Grade Separation Program which provides partial funding for new separation projects. Allowing this project to move forward would provide significant and necessary public needs and safety.

PROPOSED MODIFICATION

WHEREFORE, applicant respectfully requests the following:

² E-mail from ALJ Sophia J. Park to RCEB Supervisor Mathew Bond

1. Applicant respectfully requests that Commission for Modification of Decision 14-11-034 Ordering providing an extension of time to complete construction, to November 20, 2023.
2. Expedited processing of this application to resolve the urgent need for alternate access.

Dated at Bakersfield, California, in the County of Kern, this _____ day of _____ , 2022.

County of Kern

Craig M. Pope, P.E.
Director, Public Works Department

2700 M Street, Suite 400
Bakersfield, California 93301-2370
Phone: 661-862-8850
Fax: 661-862-8851

VERIFICATION

I am an authorized employee of applicant governmental entity herein and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this _____ day of _____, 2022 at _____, California.

County of Kern

Craig M. Pope, P.E.
Director, Public Works Department

EXHIBIT 1

2017 Extension Request Letter

**KERN COUNTY
PUBLIC WORKS DEPARTMENT
CRAIG M. POPE, P.E., DIRECTOR**



**2700 "M" STREET, SUITE 400
BAKERSFIELD, CA 93301-2370**

**ADMINISTRATION & ENGINEERING
BUILDING & DEVELOPMENT
FINANCE
OPERATIONS & MAINTENANCE**

Phone: (805) 862-8850
FAX: (805) 862-8851
Toll Free: (800) 662-6376 Option 6
TTY Relay: (800) 735-2929

September 15, 2017

Oliver Garcia
California Public Utilities Commission's Safety and Enforcement Division
Rail Crossings and Engineering Branch
Los Angeles Office
320 West 4th Street, Suite 500
Los Angeles, CA 90013

Re: Request for Extension – Decision 14-11-031

Dear Mr. Garcia,

The County of Kern is requesting an extension of Decision 14-11-031, the new crossing identified as Atlas Street, California Public Utilities Commission Crossing Number 103Q-111.61-B and United States Department of Transportation Number 936384Y.

The project has not proceeded as timely as we had anticipated due to transportation funding and right of way challenges. We are prepared to proceed with the construction of this project in the Spring of 2018.

Attached is the Decision authorizing the County of Kern to construct a grade-separated highway-rail crossing under the San Joaquin Valley Railroad Landco subdivision mail line tracks in Kern County. If you need any further information or have questions, please contact Lynn Brooks at 661.862.8872 or at brooks1@kerncounty.com.

Thank you for your assistance.

Best Regards,

Craig M. Pope, PE
Director

cc:
Mr. Randy L. Perry
General Manager
San Joaquin Valley Railroad
221 North F Street
P.O. Box 937
Exeter, CA 93221
Email: Randall.perry@qwr.com

EXHIBIT 2

Vicinity Map

EXHIBIT 3

SJVR Concurrence Letter



a Genesee & Wyoming Company

September 27, 2017

Lynn H. Brooks, P.E.
Assistant Director, Public works
2700 M Street Suite 400
Bakersfield, CA 93301

RE: Atlas Underpass on SJVR Landco Subdivision

Ms. Brooks;

The San Joaquin Valley Railroad (SJVR) supports the County of Kern's request to the California Public Utilities Commission for an extension of time to construct the proposed Atlas Underpass under the tracks of the SJVR's Landco Subdivision. This support is predicated on the two conditions the railroad provided the county on June 9, 2017 (50 foot clearance of industry switch to bridge structure, and providing a continuous walkway for railroad maintenance activities.

Please feel free to contact Kevin Boles of Xorail at 925-285-8718 with any questions in this matter.

Thanks,

Anthony Jones

Anthony Jones
Director of Engineering
San Joaquin Valley Railroad

EXHIBIT 4

City of Bakersfield Concurrence Letter

EXHIBIT 5

Kern Council of Governments Concurrence Letter

EXHIBIT 6

Concurrence Letters-Local Businesses

EXHIBIT 7

Recent CPUC Decision Processing Time

1. Santa Cruz RTC D.20-10-020, A.20-04-019; 6 months
2. City of Pomona D.20-10-021, A.20-02-007; 8 months
3. City of Ione New Crossing D. 20-11-045, A. 18-08-010; 39 months
4. CA High Speed Rail D.21-01-007, A.20-08-015; 5 months
5. City of San Diego D.21-01-013, A.20-07-005; 6 months
6. SMART D.21-03-029, A.20-07-017; 8 months
7. CA High Speed Rail D.21-05-024, A.20-09-007; 8 months
8. SMART D.21-06-008, A.20-07-016; 13 months
9. CA High Speed Rail D.21-08-008, A.20-09-006; 11 months
10. CA High Speed Rail D.21-09-008, A.21-02-010; 7 months

EXHIBIT 8

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

1. Caption for the proceeding:

This decision continues A.14-04-017 which authorizes the County of Kern to construct a grade-separated highway-rail crossing under the San Joaquin Valley Railroad Landco Subdivision main line tracks in an unincorporated area of Kern County. The new crossing will be identified as Atlas Street, California Public Utilities Commission Crossing Number 103Q-111.61-B and United States Department of Transportation Number 936384Y.

1. Docket Number: Decision A14-04-017

2. Title of Document: PETITION FOR MODIFICATION OF DECISION 14-11-031

3. Service (Via Email – Rule 1.10)

a. Place: Electronic Mail Service

b. Date: March 23, 2022

c. Service provided by:

Michael Dillenbeck
Public Works Manager,
County of Kern, Public Works Department
2700 M Street, Suite 400
Bakersfield, CA 93301

4. Copies of all such communications should be addressed to the following:

Mr. Jessie Ugaitafa
General Manager
San Joaquin Valley Railroad
221 North F Street
P.O. Box 937
Exeter, CA 93221
jessie.ugaitafa@gwrr.com

Ms. Donna Killingsworth
Real Estate Manager
Genesee & Wyoming, Inc.
Real Estate Department
13901 Sutton Park Drive
South, Suite 160
Jacksonville, FL 32224
gwappseast@gwrr.com

Mr. Gregg Strakaluse
Public Works Director
City of Bakersfield
Public Works Department
1501 Truxtun Avenue
Bakersfield, CA 93301
PWADM@bakersfieldcity.us

Dionisio Martinez
Manager Public Projects
BNSF Railway Company
740 East Carnegie Drive
San Bernardino, CA 92408
Dionisio.Martinez@bnsf.com

Dated this 23rd day of March, 2022 at Bakersfield, California by:



Michael Dillenbeck
Public Works Manager, Kern County Public Works Department